

REMARKS

This is intended as a full and complete response to the Final Office Action dated December 10, 2004, having a shortened statutory period for response set to expire on March 10, 2005. Please reconsider the claims pending in the application for reasons discussed below.

Claims 1-41 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3-4, 7-8 and 14 of copending Application No. 10/011,605 (*Gysling*) in view of either U.S. Patent 6,354,147 (*Gysling et al.*) or U.S. Patent 6,601,458 (*Gysling et al.*). Claims 1-41 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 7-8, 14, 17-19, 23-24, 31-32 and 35-38 of copending Application No. 10/636,095 (*Gysling*) in view of either U.S. Patent 6,354,147 (*Gysling et al.*) or U.S. Patent 6,601,458 (*Gysling et al.*).

The Examiner states that since the instant application does not have an earlier filing date than the other applications, a terminal disclaimer for applications 10/011,605 and 10/636,095 is necessary. The Examiner further states that M.P.E.P. § 804 (I)(B) indicates that if the "provisional" double patenting rejections in both applications are the only rejections remaining in those applications, the Examiner should withdraw the rejections in the application with the earlier filing date and permit the application to issue as a patent.

Applicant respectfully disagrees with the Examiner's interpretation that a terminal disclaimer is required. First, the M.P.E.P. only relies on filing date to determine which application should be permitted to issue where the "provisional" double patenting rejections are the only rejections remaining in both applications. However, the "provisional" double patenting rejection is not the only rejection remaining for applications 10/011,605 and 10/636,095. Specifically, the application 10/011,605 currently has rejections under § 103 and various claim objections, and the application 10/636,095 has rejections under §§ 102/103. Accordingly, as soon as the "provisional" double patenting rejection is the only rejection in one application (*i.e.*, instant application) the rejection should be withdrawn from that application and the application

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permitted to issue. Secondly, Applicant points out that the instant application also has an earlier filing date than the application 10/636,095.

Having addressed all issues set out in the Final Office Action, Applicant respectfully submits that the claims are in condition for allowance and respectfully request that the claims be allowed.

Respectfully submitted,



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